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No. 98-227

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

K. W. PRUNTY, Warden, et al., *Petitioners*,

v.

JAITSEN J. SINGH, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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APP

TABLE OF CONTENTS

	Page
REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI	1
CONCLUSION	4

TABLE OF AUTHORITIES

	Page
Cases	
Brady v. Maryland 373 U.S. 83 (1963)	2
Kyles v. Whitley 514 U.S. 419 (1995)	2
Court Rules	
Supreme Court Rule 15.6	1

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Pursuant to Supreme Court Rule 15.6, this reply brief addresses the following points raised by Singh in his opposition to the petition for writ of certiorari.

Singh argues the only evidence against him was Copas's claim that Singh solicited him to kill Singh's wife, Singh was having an affair, and Singh purchased but later tried to cancel life insurance policies. (Opp. to Pet. for Writ of Cert., at 7.) Singh's characterization of the evidence presented against him at trial is a gross distortion both in terms of its misleading understatement of the evidence he cites and its omission of the overwhelming majority of the trial evidence. The evidence is too voluminous to recite in this reply; Petitioners respectfully direct this Court's attention to a full and accurate statement of the trial evidence set forth both by the state court of appeal and the federal district court. (Appendix to Pet. for Writ of Cert., A-40 to A-55, A-65 to A-83.)

With or without Copas's testimony, the trial evidence against Singh was voluminous, compelling and unerringly pointed to his guilt.

The opinion by the Ninth Circuit completely fails to consider the overwhelming trial evidence against Singh. This omission results in more than just a misapplication of Kyles.[1] It directly conflicts with the standard of materiality articulated in this Court's Brady[2] jurisprudence as well as other opinions by this Court. (Pet. for Writ. of Cert., at 7-8.) Singh, however, argues Petitioners have misrepresented the record since the Ninth Circuit Court of Appeal recounted the trial evidence in the portion of its opinion relating the proceedings in the lower federal court. (Opp. to Pet. for Writ of Cert., at 6.) Petitioners have made no misrepresentation. The Court of Appeals' statement of the facts presented at trial completely glosses over the trial evidence and omits detailing most of the trial evidence demonstrating Singh's guilt. (Appendix to Pet. for Writ of Cert., A-100 to A-102.) The summary of the trial evidence the magistrate judge relied upon is presented only in the context of explaining the procedural history of the case. (Appendix to Pet. for Writ of Cert., A-102 to A-107.) Nowhere in the materiality analysis does the Ninth Circuit acknowledge, address, or even reject any of the trial evidence other than that pertaining to Raymond Copas. (Appendix to Pet. for Writ of Cert., A-107 to A-113.)[3]

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1. Kyles v. Whitley, 514 U.S. 419 (1995).

2. Brady v. Maryland, 373 U.S. 83 (1963).

3. As an afterthought, the Ninth Circuit notes in its conclusion that the magistrate judge cited evidence implicating Singh that was independent of Copas's testimony. (Appendix to Pet. for Writ of Cert., A-114.) Unable to confront the wealth of evidence against Singh because it would necessarily alter the materiality analysis, the

Singh also argues certiorari should be denied because the Ninth Circuit applied the correct standard of materiality to the facts. (Opp. to Pet. for Writ of Cert., at 4-5.) A careful review of the opinion reveals otherwise. The crux of the materiality analysis, in which the Ninth Circuit renders its actual materiality determination, utilizes an incorrect and diluted standard of materiality (Appendix to Pet. for Writ of Cert., A-111), notwithstanding the court's earlier recitation of the correct legal standard. (Appendix to Pet. for Writ of Cert., A-108.) In arguing that the Ninth Circuit applied the correct standard, Singh cites to, and summarizes, the facts the Ninth Circuit relied upon, but this only highlights the Ninth Circuit's error in ignoring the wealth of compelling evidence in this murder-for-hire case. (Opp. to Pet. for Writ of Cert., at 3-5.)

Finally, although the following points do not significantly impact whether the petition for writ of certiorari should be granted, Petitioners note that Singh improperly asserts the prosecutor committed perjury. (Opp. to Pet. for Writ of Cert., at 2.) There has been no finding of perjury by any court reviewing this case, including the Ninth Circuit Court of Appeals. Additionally, Singh's repeated suggestion that the state court of appeal failed to apply the appropriate standard of materiality (Opp. to Pet. for Writ of Cert., at 2-3) is simply incorrect. (Appendix to Pet. for Writ of Cert., A-61 to A-62.)

Ninth Circuit then immediately reverts back to a discussion of Copas. (Id.)

CONCLUSION

The Ninth Circuit's opinion in this case utilized an incorrect and significantly diluted standard of materiality. Additionally, the materiality analysis conflicts with United States Supreme Court precedent by ignoring virtually all of the voluminous trial evidence against Singh. For these reasons, the petition for writ of certiorari should be granted.

Dated: September 28, 1998.

Respectfully submitted,

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